

Message Text

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PAGE 01 USBERL 00307 01 OF 02 191745Z

43

ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

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TO AMEMBASSY BONN

INFO SECSTATE WASHDC 1988

AMEMBASSY BERLIN UNN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 0307

E O 11652: GDS

TAGS: PGOV, PFOR, WB, GW, UR

SUBJ: POSSIBLE FEDERAL PROSECUTION OF LORENZ KIDNAPPERS

REFS: A. USBERLIN 262, B. USBERLIN 252

1. SUMMARY: WE HAVE PROPOSED FOR ALLIED CONSIDERATION DRAFTS OF ALTERNATIVE REPLIES THAT MIGHT BE MADE TO SOVIET STATEMENT ON FEDERAL PROSECUTOR ONCE DECISION HAS BEEN TAKEN AS TO WHETHER THAT OFFICIAL MAY HANDLE LORENZ KIDNAPPING CASE BEFORE BERLIN COURT. INTERVIEW IN CURRENT DER SPIEGEL SUGGESTS, HOWEVER, THAT FEDERAL PROSECUTOR MAY NOT INTEND TO BRING CHARGES IN NEAR FUTURE. END SUMMARY.

2. ALLIED MISSIONS AGREED WITH OUR SUGGESTION THAT RECOMMENDATION BE MADE TO EMBASSIES THAT CHAIRMAN POLAD'S (US) ON THE SPOT RESPONSE TO SOVIET STATEMENT FEBRUARY 12 BE CONSIDERED SUFFICIENT FOR TIME BEING. WE AGREED WITH ALLIES, HOWEVER, THAT WORK SHOULD
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PAGE 02 USBERL 00307 01 OF 02 191745Z

PROCEED ON PREPARING POSSIBLE REPLIES THAT MIGHT BE MADE TO SOVIETS ONCE BASIC DECISION ON PROSECUTION

HAS BEEN TAKEN BUT BEFORE THAT DECISION HAD BEEN MADE PUBLIC OR SOVIETS HAVE COME BACK WITH ANOTHER STATEMENT. WE CONSIDERED THAT OUR REPOSE TO SOVIETS WOULD HAVE TO BE MUCH THE SAME REGARDLESS OF WHETHER DR. BUBACK WAS ALLOWED TO HANDLE CASE OR NOT. ALLIES ARE IN AGREEMENT THAT HE IS LEGALLY ENTITLED TO DO SO, THAT MAHLER CASE IS PRECEDENT, AND THAT QA DOES NOT FORBID SUCH ACTIVITY. PRESENT QUESTION, EVEN AS PHRASED BY FRENCH WHO HAVE THUS FAR EXPRESSED MOST MISGIVINGS, IS ONE OF POLITICAL OPPORTUNENESS. WERE IT TO BE DECIDED THAT FEDERAL PROSECUTOR SHOULD NOT, FOR POLITICAL REASONS, HANDLE CASE, THERE WOULD BE ALL THE MORE REASON TO CONFIRM BASIC POSITION TO SOVIETS LEST SOVIETS APPEAR TO HAVE ESTABLISHED THEIR RESTRICTIVE INTERPRETATION OF QA. IF IT WERE ULTIMATELY DECIDED THAT FEDERAL PROSECUTOR MAY HANDLE CASE, WE WOULD ASSUME AGAIN THAT THRUST OF OUR RESPONSE WOULD BE GENERAL PROPRIETY OF SUCH ACTIVITY PURSUANT TO LAWS IN FORCE IN BERLIN AND RESERVED ALLIED RIGHTS AND RESPONSIBILITIES. ONLY VARIANCE WOULD BE THAT WE WOULD THEN WISH TO ADVISE SOVIETS OF DECISION TAKEN AND TO POINT OUT CLEAR PRACTICAL REASONS WHY FRG HAD LEGITIMATE INTEREST IN THIS CASE.

3. WE ACCORDINGLY HAVE PROPOSED FOLLOWING ALTERNATIVE DRAFTS TO ALLIED MISSIONS:

A. IN EVENT DECISION IS TAKEN THAT CASE WILL BE HANDLED BY FEDERAL PROSECUTOR: BEGIN TEXT: THE ALLIED AUTHORITIES HAVE ASKED ME TO MAKE THE FOLLOWING STATEMENT IN RESPONSE TO THE SOVIET STATEMENT OF FEBRUARY 12, 1976 TO THE CHAIRMAN POLITICAL ADVISER.

THOSE ACTIVITIES OF THE FEDERAL PROSECUTOR AND OF MEMBERS OF THE FEDERAL PROSECUTOR'S STAFF WHICH ARE CARRIED OUT IN BERLIN ARE DONE SO PURSUANT TO LAWS IN FORCE IN BERLIN AND ARE SUBJECT TO RESERVED ALLIED RIGHTS AND RESPONSIBILITIES. THE POSITION OF THE ALLIED AUTHORITIES WITH RESPECT TO THESE ACTIVITIES WAS EXPLAINED TO THE SOVIET AUTHORITIES DURING THE CONFIDENTIAL
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PAGE 03 USBERL 00307 01 OF 02 191745Z

COURSE OF THE NEGOTIATIONS LEADING TO THE CONCLUSION OF THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971. THESE ACTIVITIES PURSUANT TO THE LAWS IN FORCE IN THE CITY AND SUBORDINATE TO ALLIED CONTROL ARE NOT ACTS OF DIRECT STATE AUTHORITY OVER THE WESTERN SECTORS AND ARE IN NO WAY IN CONTRADICTION TO THE QUADRIPARTITE AGREEMENT. THE ALLIED AUTHORITIES WOULD RECALL THAT THE FEDERAL PROSECUTOR AND MEMBERS OF HIS OFFICE HAVE FOR MANY YEARS CARRIED OUT SUCH ACTIVITIES IN THE WESTERN SECTORS. THEY WOULD RECALL, FOR EXAMPLE, THE

PROSECUTION AND CONVICTION OF HORST MAHLER BY THE
FEDERAL PROSECUTOR BEFORE THE BERLIN KAMMERGERICHT
IN 1972-1973.

THE ALLIED AUTHAORITIES HAVE ALSO ASKED ME TO
INFORM YOU THAT IT IS EXPECTED THAT THE FEDERAL
PROSECUTOR WILL FILE CHARGES AGAINST SUSPECTED MEMBERS
OF THE CRIMINAL ORGANIZATION "JUNE 2 MOVEMENT" IN
CONNECTION WITH THE KIDNAPPING OF PETER LORENZ AND
RELATED ACTIVITIES. THIS ROUTINE LEGAL STEP IS TO BE
TAKEN ON THE BASIS OF LAWS IN FORCE IN BERLIN AND
IS NECESSITATED, INTER ALIA, BY THE PRACTICAL FACT
THAT CERTAIN OF THOSE ACTIVITIES, PARTICULARLY WITH
RESPECT TO THE LORENZ KIDNAPPING, INVOLVED COERCION
("NOETIGUNG") OF OFFICIAL ORGANS OF THE FEDERAL
GOVERNMENT AND OF THE LAENDER OF THE FEDERAL REPUBLIC
AS WELL AS OF THE BERLIN SENAT. END TEXT.

B. IN EVENT THAT DECISION IS TAKEN THAT CASE IS TO BE
HANDLED BY BERLIN PROSECUTOR: BEGIN TEXT: (FIRST
TWO PARAGRAPHS SAME AS ABOVE.)

THE ALLIED AUTHORITES HAVE ALSO ASKED ME TO
INFORM YOU THAT THE ULTIMATE DECISION AS TO WHETHER
THE PROSECUTION OF SUSPECTED MEMBERS OF THE CRIMINAL
KIDNAPPING OF PETER LORENZ AND RELATED ACTIVITIES IS
TO BE UNDERTAKEN BY THE FEDERAL PROSECUTOR OR THE BERLIN
PROSECUTOR WILL BE MADE BY THE COMPETENT AUTHORITIES
ON THE BASIS OF THE LAWS IN FORCE IN BERLIN AND
UPON A CONSIDERATION OF THE LEGAL REQUIREMENTS OF THE
SPECIFIC CASE. END TEXT.

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PAGE 01 USBERL 00307 02 OF 02 211709Z

43

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C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 0307

4. BRITISH HAVE AGREED TO RECOMMEND BOTH TEXTS IN FULL TO THEIR EMBASSY. FRENCH HAVE PROMISED TO STUDY THEM CAREFULLY AND GIVE US VIEWS AS SOON AS POSSIBLE. FROM OBSERVATION OF FRENCH BEHAVIOR UP TO NOW IN THIS MATTER, HOWEVER, WE DOUBT THAT FRENCH MISSION WILL FEEL FREE TO TAKE DEFINITIVE POSITION ON DRAFT RESPONSES UNTIL FRENCH EMBASSY (OR PARIS) HAS DEVELOPED POSITION ON BASIC QUESTION OF WHO HANDLES PROSECUTION. LONGER MATTER REMAINS IN ABEYANCE WITHOUT DECISION, AND, EVEN MORE PARTICULARLY, LONGER GAP THERE IS BETWEEN DECISION AND ANY ALLIED RESPONSE TO SOVIETS, GREATER IS LIKELIHOOD OF LEAKS OR PRESS SPECULATION OF SORT THAT COULD RESTRICT ALLIED AND GERMAN FREEDOM OF MANUEVER. EMBASSY MAY, THEREFORE, WISH TO RAISE DRAFTS WITH OTHER ALLIES OR IN BONN GROUP WITHOUT WAITING FOR FORMAL TRIPARTITE MISSION RECOMMENDATION.

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PAGE 02 USBERL 00307 02 OF 02 211709Z

5. WE HAD HITHERTO BEEN LED TO BELIEVE BY SENAT THAT FEDERAL PROSECUTOR'S DECISION ON WHETHER OR NOT HE WISHED TO HANDLE CASE WOULD, IN NFORMAL COURSE OF AFFAIRS, COME FAIRLY SOON, PROBABLY BEFORE EASTER. INTEVIEW WITH DR. BUBACK IN DER SPIEGEL WHICH APPEARED ON NEWSSTANDS FEBRUARY 16, HOWEVER, SUGGESTS THAT TIME FRAME FOR DECISION MAY BE MUCH MORE LEISURELY. BULK OF INTERVIEW IS ON OTHER ASPECTS OF FRG'S OF FRG'S PROBLEMS WITH TERRORISTS. IN RESPONSE TO INTERVIEWER'S QUESTION WHETHER THERE IS LIKELY TO BE EARLY INDICTMENT IN LORENZ CASE, HOWEVER, BUBACK RESPONDED:" I CONSIDER IT AN ILLUSION THAT WE CAN COUNT ON AN INDICTMENT IN A FORESEEABLE PEROD OF TIME--IN THIS YEAR IN NO CASE. PERHAPS THE BERLINRS WERE SO GENEROUS IN THEIR EVALUATION OF THE FACTS THAT WE WILL HAVE TO SAY THAT WITH THIS RESULT WE CAN NOT YET GO BEFOE THE COURT." SOMEWHAT LESS HELPFULLY, DR. BUBACK ALSO IS QUOTED AS RESPONDING TO SUGGESTION THAT ALLIES HAVE RAISED OBJECTIONS TO HIS HANDLING CASE AS FOLLOWS:" I DON'T KNOW OF ALLIED

OBJECTIONS. NATURALLY WE HAVE TO INFORM THEM IN ADVANCE--
SO THAT THEY CAN COVER US IN THE EAST PROTESTS." BUBACK'S
COMMENT THAT HE APPARENTLY DOES NOT EXPECT AN INDICTMENT
THIS YEAR MAY DAMPEN PRESS SPECULATION THAT A DECISION
ON A TRIAL IS IMMINENT. EMBASSY MAY WISH TO CONSIDER
ASKING FRG IN BOON GROUP, HOWEVER, WHETHER COMMENT
DOES IN FACT MEAN THAT NO DECISIONS NEED TO BE TAKEN
AT PRESENT. SENATOR FOR JUSTICE OXFORD HAS TOLD US
HE DOES NOT KNOW WHAT BUBACK MAY HAVE MEANT. HE
BELIEVES BERLIN POLICE AND PROSECUTOR DID GOOD
JOB COMPILING VERY DETAILED INVESTIGATIVE REPORT
WHICH WAS SENT TO BUBACK IN DECEMBER. HE NOTES,
HOWEVER, THAT GERMAN LEGAL SYSTEM PERMITS WHAT BY
U.S. STANDARDS WOULD BE INORDINATELY LONG PRE-TRIAL
CONFINEMENT WHILE PROSECUTION CONTINUES TO BUILD CASE
AND THAT IN AN IMPORTANT CASE BUBACK MAY WELL WISH TO
BE DOUBLY SURE ALL EVIDENCE IS PINNED DOWN, BEFORE HE
TAKES IT ON. GEORGE

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